

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:BOS:POSTF-123603-02

BJLaterman

date: **JUN 07 2002**

to: [REDACTED], Team Manager
LMSB [REDACTED]

from: Associate Area Counsel, Boston
CC:LM:FS:BOS

subject: [REDACTED]
Forms 872
Taxable Years [REDACTED] through [REDACTED] and
taxable year ending [REDACTED]

This memorandum responds to your request of April 22, 2002, that we give advice regarding extending the statute of limitations for the above-mentioned consolidated group's taxable years [REDACTED] through [REDACTED] and the taxable year ending [REDACTED]. This memorandum should not be cited as precedent.

[REDACTED] (EIN. [REDACTED]) was a [REDACTED] corporation which was the parent corporation of an affiliated group of corporations. Said group filed consolidated federal income tax returns for their [REDACTED] through [REDACTED] taxable years and the taxable year ending [REDACTED].

[REDACTED] is a [REDACTED] corporation. [REDACTED], Inc., also a [REDACTED] corporation, is an indirectly owned subsidiary of [REDACTED]. In taxable year [REDACTED], [REDACTED]% of [REDACTED], Inc.'s issued and outstanding stock was indirectly owned by [REDACTED]. [REDACTED], Inc., a [REDACTED] corporation, is a [REDACTED]% owned subsidiary corporation of [REDACTED].

On [REDACTED], [REDACTED], Inc. acquired [REDACTED]. The acquisition was accomplished through the merger of [REDACTED], Inc.'s transitory merger subsidiary with and into [REDACTED], Inc., with [REDACTED], Inc. as the surviving corporation. [REDACTED], Inc. and its subsidiaries (including [REDACTED], Inc. and its subsidiaries) filed as members of [REDACTED].

consolidated group for the and taxable years. In , 's ownership of , Inc.'s stock fell below the % threshold required to file as member of the 's consolidated group. Therefore, beginning in the taxable year, (with , Inc. as the parent) filed a separate consolidated return.

is a Delaware limited liability company formed by , Inc. on or about . , Inc. was the sole member of . The Limited Liability Agreement provided that:

For so long as there is only one Member of the Company, the Company shall be disregarded for Federal income tax purposes as an entity separate from the Member, pursuant to Treasury Regulation Section 301.7701-3(b)(1)(ii).

On or about , Inc. transferred the stock of the , Inc. to , Inc. The transaction was treated as a I.R.C. § 351 transfer. In a statement attached to the consolidated return of , the disclosures required by Treas. Reg. § 1.351-3(b) were made.

On or about , Inc. merged with and into , LLC with , LLC as the survivor of such merger. The merger was in accordance with the Delaware Limited Liability Act and the Business Corporation Law. The "Agreement of Merger" provided that all debts, liabilities and duties of , Inc. shall become the debts, liabilities and duties of , LLC. On or about , LLC changed its name to , LLC.

Inasmuch, as pursuant to the provisions of Treas. Reg. § 301.7701-3(b)(1)(i) , LLC is to be disregarded as an entity separate from , Inc., the merger was treated as a liquidation of , Inc. into its parent corporation (, Inc.) under I.R.C. § 332 even though under state law, the LLC is recognized as the successor; i.e. inheriting all the assets and liabilities of , Inc. The LLC after the merger owned the stock of the five subsidiaries of , Inc. The Examination Division has accepted the characterization of the merger as a tax

free liquidation under I.R.C. §332 of [REDACTED], Inc. into its parent, [REDACTED]. Subsequent to the merger, the LLC and the [REDACTED] subsidiaries were acquired by the [REDACTED]. You have requested advice regarding extending the statute of limitations for The Colonial Group, Inc. and [REDACTED] through [REDACTED] taxable years and the taxable year ending [REDACTED].

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters related to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each subsidiary. Treas. Reg. § 1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). Treas. Reg. § 1.1502-77(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect to the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

Temp. Reg. § 1.1502-77T provides exceptions to the general rule. Temp. Reg. § 1.1502-77T provides for alternative agents in certain circumstances and applies to waivers of the statute of limitations for taxable years for which the due date (without extensions) of the consolidated return is after September 7, 1988. Therefore, the regulation is applicable in this case. Temp. Reg. § 1.1502-77T provides that a waiver of the statute of limitations with respect to the consolidated group given by any one or more corporations referred to in paragraph (a)(4) of the section is deemed to be given by the agent of the group.

Subparagraph (a)(4)(i) lists as an alternative agent the common parent of the group for all or any part of the year to which the notice or waiver applies. In this case, the common parent, [REDACTED], Inc., was liquidated on [REDACTED] and is no longer in existence. Therefore, this paragraph does not apply.

Subparagraph (a)(4)(ii) lists as an alternative agent a successor to the former common parent in a transaction in which I.R.C. § 381(a) applies. I.R.C. § 381(a) applies, in part, to an acquisition of assets of a corporation by another corporation in a distribution to such other corporation to which I.R.C. § 332 (relating to liquidations of subsidiaries) applies. On [REDACTED], [REDACTED], Inc. merged into its single member limited liability company which is treated as a subsidiary liquidation of [REDACTED], Inc. into its parent, [REDACTED], Inc., under I.R.C. § 332. Accordingly, pursuant to Temp. Reg 1.1502-77T (a)(4)(ii), [REDACTED] Services, Inc. would be an alternative agent for [REDACTED], Inc. consolidated group for the [REDACTED] through [REDACTED] taxable years and the taxable year ending [REDACTED].

Based on the foregoing discussion, we recommend that you obtain a Form 872 from [REDACTED], Inc. We recommend that the caption on the Form 872 read: [REDACTED], Inc. (EIN) as alternate agent for [REDACTED], Inc. (EIN) consolidated group.* On the bottom of the form, you should add the following: *This is with respect to the consolidated federal income tax liability of [REDACTED], Inc. consolidated group for its taxable years [REDACTED] through [REDACTED] and the taxable year ending [REDACTED]. Also in addition to the caption, we recommend that you insert the EIN of [REDACTED], Inc. in the box in the upper right hand corner of the front page of the Form 872.

This Form should be signed by a currently authorized officer of [REDACTED], Inc. Rev. Rul. 83-41, 1983 C.B. 339, clarified and amplified by, Rev. Rul. 84-165, 1984-2 C.B. 305.

Additionally, we recommend obtaining a separate Form 872 from the LLC as to its primary liability as successor to The [REDACTED], Inc. We recommend that the caption read as follows: [REDACTED], LLC(EIN), formerly [REDACTED], LLC, as successor in interest to [REDACTED], Inc.(EIN).* On the bottom of the Form 872, you should add the following: *This is with respect to the consolidated tax liability of [REDACTED] consolidated group for its taxable years [REDACTED] through [REDACTED] and the taxable year ending [REDACTED]. This Form should be signed by a currently authorized officer of [REDACTED], LLC. Furthermore, you should insert the EIN


CC:LM:F:BOS:POSTF-123603-02
BJLaterman

of the LLC in the box in the upper right hand corner of the front page of the Form 872.

As a final matter, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual(IRM). Specifically, IRM 121.2.22.3 requires use of Letter 907(DO)to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929(DO)to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the authorized manager should promptly sign and date it in accordance with Treas. Reg. §301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event that Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that §3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. §6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy the requirement, Publications 1035, "Extending the Tax Assessment Period," must be given when you solicit the statute extension.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as attorney client privilege. If disclosure becomes necessary, please contact this office for our views. If we can be of any further assistance, the undersigned can be reached at(617)565-7855.



BARRY J. LATERMAN
Special Litigation Assistant

1/6/05 RTI CMB 6/6/02